

Clegg (J.)



TO THE
GENTLEMEN of the COMMITTEE,
APPOINTED FOR
Directing the Concerns of the BURGESSES.

SIRS,

FROM convinced Experience, I am fully satisfied you will make nothing a Matter of your Request to me, but what (consistent with the Steps I have already taken) is my Duty to comply with.

The following Remonstrance, which I drew up with Design to have laid before the Gentlemen of the Council, had the expected Opportunity for doing so offered, I have put into the Hands of one who is a Member of that Body, and who has declared himself an Advocate for what is right and just, the Morning after the Council was held, with a Desire to lay it before them: and, as you have requested it may be made public, considering that it relates to your general Concerns, I commit it to your Patronage.

As you know who alone it comes from, I hope you and others will make Allowance for Defects. This is what I can assure you of, that I have no Way disguised my own Reason and Judgment; any thing in Opposition, which to me appears stronger, I hope I shall, agreeably to former Declarations, always submit to.

I am,

GENTLEMEN,

Oct. 7, 1757.

Your very humble Servant,

Joseph Clegg.

GENTLEMEN,

AS *Liverpool* is a Corporation, the Power of governing the Concerns of it is derived from the several Charters granted to the Mayor, Bailiffs and Burgeses; and as those are our Rule, so we, as a Common-Council, ought to conduct Measures accordingly, being an accountable Body.

The Reason why I mention this to you is, that we may consider the Situation of the Burgeses as an incorporated Society; and in a more particular Manner, the Nature and Extent of our Trust, for the Good of the Community in general, as Members of the Common-Council; and thereby be able (in that Capacity) to form a better Judgment of the true Extent of our Power; so that on one hand we may not give up to the Burgeses any Right which belongs to ourselves to enjoy, neither on the other hand make any Encroachment upon their Charter Property; an Observation of this Medium, will always support the Reputation of a Common Council, and occasion their being looked upon and esteemed as a respectable Body.

If we are any of us yet Strangers to the Constitution of the Corporation, it is highly necessary we should endeavour, as Trustees, to remain no longer in Ignorance. I have taken pains to arrive at some Degree of Knowledge, and shall freely give you my thoughts about it; and I am likewise ready, and desirous to hear the Opinions of others; for openly communicating our Sentiments, is the most likely Method of coming at a true Knowledge of Things, which it is our Duty to be acquainted with.

As we are incorporated by the Style of Mayor, Bailiffs, and Burgeses, I consider us as Three Estates connected, none of which is essentially independent, yet so, in some particular Instances. The Mayor, with Respect to some Branches of Duty, is independent on either the Bailiffs or Burgeses; the Bailiffs, in some Measure, independent on the Mayor and Burgeses; but the Burgeses no way so, yet absolutely necessary to give Sanction to the Mayor, Bailiffs, and Common-Council, in all essential Matters relating to the good Government of the Town; and in this Light the Common-Council is an essential Part of the Constitution.

I believe, Gentlemen, most of you know, that in King *Charles* the Second's Time, some Men in Town combined together, and procured, after an illegal and surreptitious Manner, a Charter from that Prince, whereby they became the Governours, not the Guardians of their Fellow Burgeses; which arbitrary Work they maintained and supported during the Reign of that Prince. When King *James* came to possess the Throne, he gave them a Charter (I believe without applying for) whereby he engrossed to himself a Power more arbitrary than they approved of, and I do not find that Charter ever accepted of, either by the then governing Power, or the Burgeses: but a few Years after that King *William* came to the Throne, the Burgeses disputed the Legality of King *Charles* the Second's Charter, and succeeded; after which, they made their Application to King *William*, praying a Confirmation of King *Charles* the First's Charter; and to have a Common-Council, which was the First and only

Charter Council that I ever heard of being legally established ; this Charter, as it includes and confirms all the Grants in that of King *Charles* the First, is allowed by us, as a Basis, or Foundation of that Superstructure of our Measures and Actings, as a Common-Council This then being considered as the Fountain from which we derive our constitutional Power, it is now highly incumbent on us, honestly and fairly to divest ourselves from that, too often, Fore-runner of Mischief, Partiality : and then deliberately compare Charter-rights respecting the Burgeses of the Common-Council, and the Burgeses at large, separately, and see whether either have been invaded, and by whom ; and if we find that either Ignorance, or Design, hath occasioned any Invasion of Right, it is certainly a Duty incumbent on us to alter Measures.

Usage and Custom is, in my Opinion, a very unjustifiable Plea for our persisting in what is wrong, and can be no Embellishment to any Gentleman's Character to give Countenance to a Refuge of that Sort ; it would be shewing a Readiness and a Willingness to partake in Crimes or Errors they can be no Way charged with, or suspected of, but by adopting them.

If there is any thing dubiously expressed in the Charter, let us fairly and openly discuss the Point, and be determined by what appears to be the most genuine and consistent Sense of it.

I have heard that it has been alledged, that a Common-Council was, by King *William's* Charter, appointed for the good Government of the Town, which, I believe, is very right ; but not that thereby they either are made, or designed to be made Governours ; therefore, I apprehend those Words are to be taken in a general, not a limited Sense ; if not so, it loads the Charter with a Heap of Contradictions, therefore ought not to be taken in that Light, while it will admit of an Interpretation quite consistent with every other Paragraph contained in it.

That King *Charles* the First should lodge a Power of making By-Laws in the Mayor, Bailiffs and Burgeses, as well as every other Power ; that King *William* should clearly and expressly, without leaving any Room to doubt, or hesitate, confirm all those Privileges to them, and in the same Charter put a Negative upon them (as it were with the same Breath) is such an Absurdity as cannot rationally admit of being any Way supposed. The last Council Day there was a Proposal made to us by Mr. *Peters*, previous to which he very justly observed, that the Court of Passage, or Mayor's Court, was not held regularly ; then let us know he was intending to quit his Profession as an Attorney, and put on the Gown, and offered his Service to become the Recorder's Deputy, and in his Absence attend that Court, without any other Consideration than the dry Honour of being his occasional Representative ; as this was all he mentioned, I will, to you, suppose nothing more intended.

I said nothing to depreciate that Gentleman's Merit, but that if Mr. Recorder's Situation render'd the Duty of that Trust inconvenient to attend, I thought he should resign it ; I said further, that it did not appear clear to me, that the Recorder could appoint a Deputy, and I now desire to offer my Reasons to your Consideration. That the Recorder had, by the late obtained Charter, such a

Power

Power given him, I do not deny; but the Validity of the Charter itself, is, in my Opinion, not sufficient to justify such Appointment, nor any Thing else contained in it.

I ground these my Sentiments upon a surer Foundation, with Respect to sound Judgment, than I have any Pretence to be Master of; therefore give you the express Words of the Gentleman I have consulted, which are, ' If you plead Charter, that of King *Charles* the First is most agreeable to original Right; ' This vests all Power in the Mayor, Bailiffs, and Burgeses. Nothing but ' a Forfeiture, or a By-Law to surrender this, could empower any succeeding ' King to abridge or alter it in any Manner. He could not even amend it, but ' at your Request, or by your Consent; then he might inspect, ratify, enlarge, ' and improve it, not otherwise. Any Charter granted against these Principles ' is void. That of King *George* the Second, if it were of any Consequence, ' might be annulled. It is a most shameful Absurdity to let a judicial Officer, ' as the Recorder is, to have a Power to appoint a Deputy.'

If the Charter of King *Charles* II (which you must allow) was obtained after an illegal and surreptitious Manner, without any Judgment of *quo Warranto*, or Consent of the Burgeses, and for those Reasons disannulled and set aside; was there any other, or better Foundation, upon which the late Charter was obtained? Could an Application for it be more secretly made? or, previous to doing so, were the Burgeses sought to for their Consent? The Petition was not entered in the Council-Book, nor an Order there for any Person to solicit it. The Contents of the Charter not now known to the Burgeses, nor has it been offered to them for their Acceptance; all these Steps were necessary to be taken, to render it valid; now, as they have not been pursued, I think there is no good Foundation to build Charter-Power upon.

This Sort of Work may indeed lay a Foundation for Dispute, Mischief and Expences to the Community; therefore, if the Peace, Tranquility and good Government of the Town is what we have truly at Heart, and desire to promote, it, at least in my Opinion, deserves your Consideration, whether I am right or wrong; whether this Sort of Management will stand the Test of a judicial Process? Whether you can justify paying the Expence of this and other Rods to whip the Burgeses with, out of the publick Stock? it at present appears to me you cannot do it. However, If I am mistaken, I am open to Conviction, and declare my Readiness to submit to stronger Reason and better Judgment; I am far from declaring a Resolution to disregard any thing which may be advanced in Opposition to my Sentiments.

Gentlemen, I have said, and now I publicly repeat it, that I can to a Day date my being publicly despised by Mr *Salisbury*; and since that Time, I can truly say, though now very near eight Years since, I was never openly countenanced by any one Member of the Common-Council: and when I found I was not permitted the Liberty of speaking, so as to be attended to in the Council-Assembly, I offered to remonstrate by writing, and went so far as to put my Remonstrances into the Mayor's Hands, where they remained secreted.

I published no Paper relating to the Public Affairs of the Town (except a Copy of the Petition for the late Charter) until I had seen one addressed to the worthy Burgesſes, and ſubſcribed in the Name of the Mayor, Bailiffs and Majority of the Common-Council, though it was neither ſeen or heard of in the Council Aſſembly; firſt charging Perſons with malicious Deſigns tending to diſturb the Peace of the Town, and then declaring themſelves ready to answer any Paper or Pamphlet which ſhould be published, to call in queſtion their upright Intentions.

Conſidering my Treatment which (in Part) I have mentioned, had I tacitly ſubmitted or declined taking notice of that Challenge, (which I could not look upon otherwiſe than being principally levelled at myſelf) it might then be conſidered, as if I had not any thing to ſay in my own Vindication.

I have as yet taken notice of but a few Things, ſo that what I may be called upon to answer to, will lie in a very narrow Compaſs.

However, if Gentlemen will diſpaſſionately point at any Thing I have made public, I hope I am ready to explain myſelf; but if the like bear-garden Treatment which I have too often met with in this Aſſembly is to be continued, I ſhall think it prudent to remain ſilent, rather than make any Return in Kind.

One Thing more I cannot avoid taking notice of, which is, that in Alderman *Goore's* Mayoralty, it admitted of a pretty ſtrong Debate, whether the Sum of Money paid by Mr. *Saluſbury* to the Treasuſurer, for the Uſe of the Corporation, ſhould be repaid him. It was not a Motion that took a ſudden Riſe, it had been deliberately conſidered of before the Council-meeting, and ſeemed to require Nothing more than the Sanction of an Order for the Treasuſurer's Security in paying it.

I remember very well it was warmly declared in Council to be Mr. *Saluſbury's* Right to have it paid back. Mr. Mayor was ſeveral Times deſired to put the Queſtion, but if that was by him intended, it was prevented by ſome Gentlemen abruptly withdrawing. Since this, it has been diſcovered, that the Treasuſurer has paid back the Money; and for his having done ſo, the Burgeſſes are determined to call him to an Account, and have given him notice of it. This is known to you; therefore I beg leave to make this Remark, that notwithstanding he had ſo many warm Advocates for his paying back the Money; yet there ſeems now to be a total Deſertion of him by a public Declaration in the Council-Aſſembly, that he is ſolely to answer for his own Conduct; his late Advocates have now nothing to ſay in his Favour.

If this Gentleman is alike deſerted when other Matters come to be laid open, tho' he may (as I hope is the Caſe) have an Indemnification for the Re-payment of the Priſage Money, I can juſtify myſelf, in ſaying, other Inſtances of Conduct will appear in a naked Dreſs, not only in the Eyes of the Burgeſſes, but to ſeveral Gentlemen who now hear me make this Declaration.

Facts, if they cannot juſtify themſelves when fairly ſcrutinized into, muſt place Agreſſors in a very diſagreeable Situation. Ignorance, I know, cannot be pleaded; and if I am found able to make good what I have already taken Notice of, I am in no Danger of failing in any Thing which I may have further Occaſion

to lay before the Puublic. The Burgesſes Spunge may wipe off what the Power of the Common Council will not be able to effect. As Members of the Common Council, or Guardians of the Burgesſes Rights, we are inveſted with Power, but yet limited, in part by the Charter, as the Foundation of it, and in part by the Burgesſes, not only by a natural inherent Right, but confirmed expreſſly to them by the Charter ; and in all Caſes where there is Limitation of Power, there is a certain Boundary which cannot be legally exceeded, without rendering the Delinquents liable, either to juſt Censure, or a more ſevere Punishment, according to the Nature of the Crimes they are found guilty of. If I am allowed to be right in this, I then appeal to your deliberate Conſideration, whether the Treasuſer, who has given a Security to the Mayor, Bailiffs, and Burgesſes, for the juſt and faithful Diſcharge of this Truſt, is not accountable (tho' primarily to the Council as a ſelect Body in Truſt) yet to the Public, to whom we ourſelves are moſt certainly accountable ; and they have a Power to take Cognizance of Tranſactions, which appear to them unjuſtifiable. It has been a Cuſtom which has many Years prevailed, and I believe, very juſtifiably and prudently too, to appoint Committees to have the Inſpection into, and the Examination of ſelect Branches of the Public's Concerns, in order to diſpatch Buſineſs with the greater Eaſe and Conveniency : The ſeveral Appointments thus made, laid their Tranſactions before the Public Council, to be there ratified, or altered ; after which they received the Sanction of an Order, entered in the Council Book ; and when the Treasuſer's Accounts came to be examined and ſettled, the Council Book was his Authority, by an Order there for paying Money, and the Receipt he produced was his Voucher for his having paid it : But for ſeveral Years paſt, I ſuppoſe it will be found, that Regularity of this Kind has been laid aſide.

The Year in which I ſerved the Office of Mayor, there was a Piece of Work which I thought neceſſary to be done without Delay ; ſome Gentlemen of the Council ſaw it as well as myſelf, and thought the ſame of it. I ordered a Workman to go about it ; he brought his Bill to the Committee, who at two ſeveral Meetings reſuſed to ſign it, becauſe there was no Order of Council for the Work being done ; and I was obliged to lay it before the Council, and explain the Neceſſity for its being executed, before an Order for Payment was obtained, tho' the Amount of the Bill, to the beſt of my Remembrance, did not reach Forty Shillings. When you ſee the Treasuſer's Accounts, you will find Payments and Orders of Council not tallying ; and I can point out one Article amounting to more Pounds than the Bill I have mentioned did Shillings, paid in contradiction to an Order of Council. I can remember Mr. Town Clerk's Accounts often called for, and promiſed, in order to be ſettled ; but I cannot charge my Memory with having ſeen any laid before the Council.

There is an Order of Council for the Corporation Accounts being ſettled every Year : You will find likewise an Order for their being printed ; there they remain unregarded, unknown to ſome, and forgot by others.

Theſe Things and many others, ſeveral Gentlemen of the Council are Strangers to, and ſo far as you think proper to diſcountenance my mentioning Matters as a Member of the Common Council, which I am well aſſured are wrong, relating
to

to the Public ; so far you become Parties, and must submit to a Scrutiny being made You have (I doubt not) been told plausible Stories, whereby your Reason and Judgment has been imposed upon ; but Facts laid open clearly to public View, I am of Opinion, will furnish an Occasion to alter your present Conceptions of Things.

I do not wonder that the Treasurer and Mr. Town-Clerk should agree in Opinion, that my Name should be expunged the Council-Book ; but I shall very much wonder, if their Transactions do not prove to be a Glass, which they will not desire to look their own Faces in.

What falls to my present Lot, to be scandalized and abused for declaring Truths, which it would be criminal to conceal, may happen to be the Portion of other Gentlemen, if they testify their Honesty by openly disapproving Measures, which they either know or believe to be wrong.

If, Gentlemen, Trustees for the Public can be Witnesses to Charges made, of the Public's Property being plundered and robbed, and clearly proved by Instances not attempted to be denied or evaded ; and to be so far from expressing a Disapprobation of such Work, as publickly to declare the Person thus laying Matters open, not only unworthy of Regard, but deserving to be prosecuted ; what is this less than adopting others Crimes in Opposition to the clearest Light and Demonstration ?

Gentlemen, I have been open and free in expressing my Sentiments ; and I wish you would be equally so, whether they coincide with mine, or otherways ; for if I am *rational*ly contradicted, I shall attend to it ; but if passionately so, it will make no Impression to give me Concern I am yet a Burgess of the Common-Council ; and you know I have the Countenance of the Burgesses out of Doors, which I set a high Value upon ; so that I can smile at Contempt, while it is but vainly made use of to hide Guilt.

The Burgesses Protest, is, I conceive, a Prosecution begun against every Thing contained in it : It has been received and acknowledged to be their Protest, by being allowed to be publickly read ; no matter whether it is allowed an Entry in the Council Book, any more than the Petition for the late Charter ; they are otherways sufficiently upon Record for the present. Therefore I am humbly of Opinion, no Person can be safe in paying a just Debt due to the Corporation, either to the Treasurer, or any other legal Member of the Common-Council ; nor can the Common Seal be given as good Security for any Person to lend Money upon, until the Validity of the said Protest is either in whole or in part by due Course of Law, set aside.

I apprehend the Common Seal affixed to a Bond, can be no Security to any Person, the doing it now can only be an Act of the Council, not of the Mayor, Bailiffs, and Burgesses ; therefore of no Effect until it can be made to appear, that the Common-Council are vested with constitutional Power, independent of the Burgesses. The being set right in these great Points, which not only affect public Credit in general, but the more private Interest of particular Persons, who have indisputably just Claims for Money upon the Corporation, demands the Notice of Gentlemen in Trust for the Public.

As you have hitherto declined to take Notice of Matters of Fact, I consign that Care to the Burgesſes. I offer this as a Point of Law, and is an Affair of too much Conſequence to them, to be kept in Suſpence about. Whether I am right or wrong, upon the whole, Gentlemen, can you name a Corporation in all *England*, where the Principles of Liberty have been more boaſted of, than by us, as a Common-Council, and leſs practiſed towards the Burgeſſes. While we have been recommending Peace and Quiet to them, as the Baſis of their Happineſs, have we not all that while been endeavouring to worm them out of their Rights. Thoſe memorable Periods of Time, when we, by a ſecret Application to his preſent Maſteſty, attempted to over-run the Conſtitution, by having the Power of making Bye-Laws within ourſelves, excluſive of the Burgeſſes, in 1751; and ſecretly printing an alphabetical Liſt of the Burgeſſes, as how they voted for Members to ſerve in Parliament in 1754, with the Conſequences which attended doing ſo, are amongſt other Inſtances of Conduct, ſuch ſelf-demonſtrative Memorials of arbitrary Intentions, as length of Time will be ſcarce able to efface.

I appeal to yourſelves, your Reaſon and Conſciences, the ſureſt and beſt Guides to Perſons of all Ranks and Degrees, whether I have acted a Part inconfiſtent with the Duty of my Truſt, as a Member of the Common-Council. I thought it my Duty to ſpeak of Things I judged to be wrong in the Council-Aſſembly, but not permitted to be heard, and this previous to the mention of them without Doubt: Under theſe Circumſtances you have driven me to the Neceſſity of making them more public.

In ſome Inſtances, you know as well as myſelf, you have been groſſly deceived, in others kept in Ignorance, and I am ſure I am far from intending to flatter any of you, when I give it as my Opinion, that moſt of you, Gentlemen, if you had not been artfully and incautiouſly (accompanied with ſtrong Prejudices againſt me) led into Miſtakes, you would not have run thoſe Lengths which you have done. Had Opinions upon Caſes relating to what has been the grand Matter of Debate, been fairly laid before you, I am perſuaded ſome Meaſures which you have ſince purſued, would not have been countenanced as they have been. I believe, Gentlemen, that in theſe Points you will agree with me, in that I am in the whole, or in great Part of what I have publiſhed, right or wrong, and that the whole of it relates to the Corporation in general, and every Individual Burgeſs, more or leſs intereſted in it; therefore, ſo far as you think proper to patronize clandestine and ſecret Tranſactions, without having either the Arguments publiſhed by the late Deputies, or ſuch as I have laid before the Publick, answered and confuted, you make yourſelves Parties, and ſo far as private Cabals are entered into and carried on relating to the Publick's Concerns, how much ſoever you may look upon it to be right among yourſelves, the Burgeſſes will conſider you as behaving out of character.



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